



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,438	03/30/2001	Jonathan Edwards	2114P016	5694

8791 7590 02/22/2005

BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

PYZOCHA, MICHAEL J

ART UNIT	PAPER NUMBER
----------	--------------

2137

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/823,438	<b>Applicant(s)</b> EDWARDS ET AL.	
	<b>Examiner</b> Michael Pyzocha	<b>Art Unit</b> 2137	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-11,17-23,25-29,35-41,43-47 and 53-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 2137

**DETAILED ACTION**

1. Claims 1-5, 7-11, 17-23, 25-29, 35-41, 43-47, 53-59 are pending.
2. Amendment filed 12/28/2004 has been received and considered.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11, 17, 19-23, 25-29, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chess et al (U.S. 6,560,632) and further in view of Wong (US 5974465).

As per claims 1 and 19, Chess et al discloses a method, apparatus and virus scanner for prioritizing virus scan requests comprising checking a virus scan request to determine if scanning an object of the request is necessary; and placing the virus scan request on a queue in a priority order based on a characteristic of the virus scan request (see column 3 lines 42-

Art Unit: 2137

56 where sending the file is sending a request for scanning to be done).

Chess et al fails to disclose the characteristic including at least one of an identity of the user triggering the virus scan request, a type of the process accessing the object, a time stamp of when the virus scan request was received and an indication of a network node accessing the object wherein the virus scan request is prioritized based on at least one of the user identity being an administrator as compared to a regular user the process type being an operating system as compared to a user application the time stamp being earlier than the time stamps of each scan request previously placed on the queues and the indication being that the object is accessed from a server console as compared to a network client.

However, Wong teaches prioritization based on the user (see column 4 lines 14-40).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Wong's method of prioritization to prioritize the requests of Chess et al.

Motivation to do so would have been that administrator's applications are more important (see Wong column 4 lines 14-40).

Art Unit: 2137

As per claims 2 and 20, the modified Chess et al and Wong system discloses selecting a one of the virus-scan requests from the queue (see column 3 line 65 through column 4 line 5).

As per claims 3 and 21, The modified Chess et al and Wong system discloses the selecting is based on the priority order (see column 3 line 47 through column 4 line 5).

As per claims 4 and 22, the modified Chess et al and Wong system discloses the selecting is based on the characteristic of the virus scan request (see column 3 line 47 through column 4 line 5).

As per claims 5 and 23, the modified Chess et al and Wong system discloses scanning the object of the selected virus scan request (see column 4 lines 6-13).

As per claims 7 and 25, the modified Chess et al and Wong system discloses the priority order is further based on comparing the characteristic of the virus scan request with the characteristics of the virus scan requests previously placed on the queue (see column 3 lines 48-64).

As per claims 8 and 26, the modified Chess et al and Wong system discloses the priority order is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 3 lines 48-64).

Art Unit: 2137

As per claims 9 and 27, the modified Chess et al and Wong system discloses the selecting is further based on comparing the characteristics of the virus scan requests placed in the queue (see column 3 line 48 through column 4 line 5).

As per claims 10 and 28, the modified Chess et al and Wong system discloses the selecting is farther based on comparing the characteristics of the virus scan requests placed in the queue with the characteristics of the previously selected virus scan requests whose objects are currently being scanned (see column 4 lines 9-13).

As per claims 11 and 29, the modified Chess et al and Wong system discloses the selecting is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 4 lines 9-13).

As per claims 17 and 35, the modified Chess et al and Wong system discloses the scanning is necessary when a virus scan status indicates the object is not known to be virus free (see figure 3).

5. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Chess et al and Wong system as applied to claims 1 and 19 above, and further in view of McAfee (webpage).

Art Unit: 2137

As per claims 18 and 36, the modified Chess et al and Wong system discloses scanning is necessary when the object of the virus scan request is in not excluded from virus scanning, but fails to disclose the object being a directory.

However, McAfee teaches scanning a directory when it is not excluded from virus scanning (see the bottom of page 8).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to apply the modified Chess et al and Wong's method for virus scanning to a directory as taught in McAfee.

Motivation to do so would have been to allow the user to scan a particular directory (see McAfee bottom of page 6).

6. Claims 37-41, 43-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Chess et al and Wong system as applied to claims 1 and 19 above, and further in view of Chiussi et al (US 6532213).

As per claim 37, the modified Chess et al and Wong system fails to disclose at least two of the characteristics.

However, Chiussi et al teaches a method of prioritizing based on timestamps (see Abstract).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Chiussi et al's

Art Unit: 2137

method of timestamp prioritization in the modified Chess et al and Wong priority based virus-scanning system.

Motivation to do so would have been to guarantee the transfer delays (see Chiussi et al Abstract).

As per claim 38, the modified Chess et al, Wong and Chiussi et al system discloses selecting a one of the virus-scan requests from the queue (see column 3 line 65 through column 4 line 5).

As per claim 39, the modified Chess et al, Wong and Chiussi et al system discloses the selecting is based on the priority order (see column 3 line 47 through column 4 line 5).

As per claim 40, the modified Chess et al, Wong and Chiussi et al system discloses the selecting is based on the characteristic of the virus scan request (see column 3 line 47 through column 4 line 5).

As per claim 41, the modified Chess et al, Wong and Chiussi et al system discloses scanning the object of the selected virus scan request (see column 4 lines 6-13).

As per claim 43, the modified Chess et al, Wong and Chiussi et al system discloses the priority order is further based on comparing the characteristic of the virus scan request with the characteristics of the virus scan requests previously placed on the queue (see column 3 lines 48-64).



Art Unit: 2137

As per claim 44, the modified Chess et al, Wong and Chiussi et al system discloses the priority order is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 3 lines 48-64).

As per claim 45, the modified Chess et al, Wong and Chiussi et al system discloses the selecting is further based on comparing the characteristics of the virus scan requests placed in the queue (see column 3 line 48 through column 4 line 5).

As per claim 46, the modified Chess et al, Wong and Chiussi et al system discloses the selecting is farther based on comparing the characteristics of the virus scan requests placed in the queue with the characteristics of the previously selected virus scan requests whose objects are currently being scanned (see column 4 lines 9-13).

As per claim 47, the modified Chess et al, Wong and Chiussi et al system discloses the selecting is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 4 lines 9-13).

As per claim 53, the modified Chess et al, Wong and Chiussi et al system discloses the scanning is necessary when a virus scan status indicates the object is not known to be virus free (see figure 3).

Art Unit: 2137

7. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Chess et al, Wong and Chiussi et al system as applied to claim 37 above, and further in view of McAfee (webpage).

As per claim 54, the modified Chess et al, Wong and Chiussi et al system discloses scanning is necessary when the object of the virus scan request is in not excluded from virus scanning, but fails to disclose the object being a directory.

However, McAfee teaches scanning a directory when it is not excluded from virus scanning (see the bottom of page 8).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to apply the modified Chess et al, Wong and Chiussi et al's method for virus scanning to a directory as taught in McAfee.

Motivation to do so would have been to allow the user to scan a particular directory (see McAfee bottom of page 6).

8. Claims 55-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Chess et al, Wong, Chiussi et al system as applied to claim 37 above, and further in view of "Chapter Thirteen Performance Tuning" (webpage) (hereinafter Performance) and further in view of Using NetWare 3.12 (webpage) (hereinafter NetWare).

Art Unit: 2137

As per claim 55, the modified Chess et al, Wong and Chiusi et al system fails to disclose using all of the characteristics for prioritization.

However, Performance teaches prioritization based on process types (see page 4) and Netware teaches prioritization based on network node type (see page 7).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Performance's method of prioritization based on process types and NetWare's method of prioritization based on network node type in the modified priority based virus-scanning method of the modified Chess et al, Wong, and Chiusi et al.

Motivation to do so would have been to define and eliminate system bottlenecks (see Performance page 1) and to prevent the reception of user sent messages (see NetWare page 7).

As per claim 56, the modified Chess et al, Wong, Chiusi et al, Performance, and NetWare system discloses selecting a one of the virus scan requests from the queue (see Chess et al column 3 line 65 through column 4 line 5).

As per claim 57, the modified Chess et al, Wong, Chiusi et al, Performance, and NetWare system discloses the selecting is based on the priority order (see Chess et al column 3 line 47 through column 4 line 5).

As per claim 58, the modified Chess et al, Wong, Chiusi et al, Performance, and NetWare system discloses the selecting is based on the characteristic of the virus scan request (see Chess et al column 3 line 47 through column 4 line 5).

As per claim 59, the modified Chess et al, Wong, Chiusi et al, Performance, and NetWare system discloses scanning the object of the selected virus scan request (see Chess et al column 4 lines 6-13).

#### ***Response to Arguments***

9. Applicant argues Chess et al's queuing of a file for analysis cannot be equated to queuing of a request for a file to be analyzed; Chess et al fails to disclose prioritization based on the characteristics in the amended independent claims; Examiner's use of inherency; FIFO does not teach prioritization based on timestamping; Chess and Cisco fail to disclose the use of multiple characteristics as in claims 37 and 55; and McAfee fails to overcome the above mentioned deficiencies.

As per Applicant's argument that Chess et al's queuing of a file for analysis cannot be equated for queuing a request for a file to be analyzed, in Chess et al the sending of a file to be analyzed is requesting that the file be analyzed and therefore queuing a file is queuing a request.

Based on the amendments to the independent claims the remaining arguments have been overcome by new rejections.

### **Conclusion**

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner

Art Unit: 2137

can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER**

MJP